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4 ROBERT J. ALEXANDER-CAMPOS,
5 Plaintiff,
6 v.
7 BENJERMIN REINKE, et al.,
8 Defendants.

9 Case No. 22-cv-05253-PJH

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**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

Plaintiff, a detainee, filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Although a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must

1 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
2 *Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough
3 facts to state a claim to relief that is plausible on its face." *Id.* at 570. The United States
4 Supreme Court has explained the "plausible on its face" standard of *Twombly*: "While
5 legal conclusions can provide the framework of a complaint, they must be supported by
6 factual allegations. When there are well-pleaded factual allegations, a court should
7 assume their veracity and then determine whether they plausibly give rise to an
8 entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

9 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right
10 secured by the Constitution or laws of the United States was violated, and (2) the alleged
11 deprivation was committed by a person acting under the color of state law. *West v.*
12 *Atkins*, 487 U.S. 42, 48 (1988).

13 **LEGAL CLAIMS**

14 Plaintiff states that defendants violated his rights by filing frivolous charges and
15 then prosecuting him.

16 In order to recover damages for an allegedly unconstitutional conviction or
17 imprisonment, or for other harm caused by actions whose unlawfulness would render a
18 conviction or sentence invalid, a 42 U.S.C. § 1983 plaintiff must prove that the conviction
19 or sentence has been reversed on direct appeal, expunged by executive order, declared
20 invalid by a state tribunal authorized to make such determination, or called into question
21 by a federal court's issuance of a writ of habeas corpus. *Heck v. Humphrey*, 512 U.S.
22 477, 486-487 (1994). A claim for damages bearing that relationship to a conviction or
23 sentence that has not been so invalidated is not cognizable under § 1983. *Id.* at 487.

24 In *Wallace v. Kato*, 549 U.S. 384, 393 (2007), the Court held that the "*Heck* rule for
25 deferred accrual is called into play only when there exists 'a conviction or sentence that
26 has not been . . . invalidated,' that is to say, an 'outstanding criminal judgment.'" *Id.* at
27 391-93 (quoting *Heck*, 512 U.S. at 486-87). The *Heck* rule delays accrual only if there is
28 an existing conviction on the date the statute of limitations begins to run, which in the

1 case of wrongful arrest or wrongful imprisonment claims is when the plaintiff's
2 confinement is no longer without legal process, but rather becomes a confinement
3 pursuant to legal process – that is, for example, when he or she is bound over by a
4 magistrate or arraigned on charges. *Id.* at 389-90. The Court stated that the contention
5 that "an action which would impugn *an anticipated future conviction* cannot be brought
6 until that conviction occurs and is set aside" goes "well beyond *Heck*" and rejected it. *Id.*
7 at 393 (italics in original). Although the Court was only considering when the statute of
8 limitations began running on a false arrest/false imprisonment claim, the discussion
9 quoted suggests that *Heck* does not apply if there is no extant conviction – for instance, if
10 plaintiff has only been arrested or charged.

11 If a plaintiff files a § 1983 false arrest claim before he or she is convicted, or files
12 any other claim related to rulings that likely will be made in a pending or anticipated
13 criminal trial, it is within the power of the district court, and accords with common practice,
14 to stay the civil action until the criminal case or the likelihood of a criminal case is ended.
15 *Id.* at 393-94. If the plaintiff is then convicted, and if the stayed civil suit would impugn
16 that conviction, *Heck* requires dismissal; otherwise, the case may proceed. *Id.* at 394.

17 Plaintiff alleges that he was the victim of an assault at a car dealership, but he was
18 improperly arrested and prosecuted. He seeks money damages. Plaintiff is currently in
19 custody, though it is not clear if that is related to the incident that he describes in the
20 complaint. The complaint is dismissed with leave to amend. Plaintiff should provide
21 more information regarding his arrest and the criminal case against him. He should
22 describe if he was convicted, acquitted or if the charges were dropped. He should
23 include any court paperwork related to the incident and the status of the case.

24 To the extent plaintiff seeks to proceed with a case against the private individuals
25 who allegedly assaulted him he is advised that to state a claim under 42 U.S.C. § 1983,
26 he must allege that: (1) a right secured by the Constitution or laws of the United States
27 was violated, and (2) the alleged deprivation was committed by a person acting under the
28 color of state law. *West*, 487 U.S. at 48.

CONCLUSION

1. The complaint is **DISMISSED** with leave to amend. An amended complaint must be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference.

2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: November 10, 2022

/s/ Phyllis J. Hamilton

PHYLLIS J. HAMILTON
United States District Judge